

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1522 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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MINAXIBEN WD/O VINODCHANDRA SHIVABHAI @ SAVJIBHAI PATEL

Versus

BABUBHAI SHIVABHAI @ SAVJIBHAIPATEL  
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Appearance:

MR MC SHAH for Petitioners  
MR MAHESH T PARIKH for Respondent No. 1  
MR PV NANAVATI for Respondent No. 2  
SERVED BY RPAD - (N) for Respondent No. 3  
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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE C.K.BUCH

Date of decision: 12/03/99

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The appellants have challenged the judgement and award dated 30th September, 1982 made by the Motor Accident Claims Tribunal, Valsad at Navsari, dismissing

the Claim Petition No. 140 of 1980 of the appellants.

2. According to the claimants, on 13th Feb. 1980, Vinodchandra had left Nadiad before mid-night for going to Bombay in connection with the work of the respondent No.1, who was the owner of the car. While driving that car around 5.00 A.M, Vinodchandra was dazzled by the lights of on coming truck and to save collision, he took his car to the extreme left, which resulted the car dashing against the tree and in that accident, Vinodchandra and the person accompanying him both died. According to the claimants, the deceased Vinodchandra was earning Rs. 10,000 per month. An amount of Rs. 2,50,000 was claimed by way of compensation.

3. The Tribunal, on the basis of the material on record, came to a finding that the accident had resulted due to the negligence of the deceased Vinodchandra. Vinodchandra was not a paid driver at the relevant time. It was also held that the Insurance Company was not liable even under "endorsement 5" because the person concerned was driving the motor car and the person driving the motor car was excluded from the limited liability of passengers for which additional premium was paid.

4. The deceased Vinodchandra was brother of the owner of the car and admittedly he was not a paid driver. The accident took place on a kutcha strip of land to the left hand side of the tar road when the car went off the road and dashed against the tree. The car was completely smashed and both the persons travelling in the car died. The manner in which the accident occurred and the nature of impact showed that the vehicle was driven at an excessive speed. The nature of damage to the car is described in the panchnama Ex.38. This type of damage could be possible only if the car is driven at an excessive speed and the driver loses control over it because of his rash driving. In our opinion, the Tribunal rightly invoked the doctrine of *res ipsa loquitur* for holding that the accident was caused due to the negligence of deceased Vinodchandra.

5. The deposition of the so-called eye witness Punjabhai Dahyabhai Patel is a classic case of concocted witness. According to Punjabhai Ex.80, he had gone to Valsad from Anand by evening Gujarat Queen on 13.2.1980 because his friend Gokalbhai wanted to purchase some land and for this purpose he had entrusted the work to this witness. He was accordingly required to go to Atul to see one Dalsukhbhai Mistry, who on enquiry by him from

the watchman was stated to have left the service. Therefore, he kept on waiting on the highway till the accident occurs in the morning after 4'0 clock. He was scheduled to go to Bombay. After seeing the accident, he proceeded to Bombay but when he comes back, Gokalbhai had talked to him about his friend being involved in an accident and suddenly he recollected that he had seen the accident. We have carefully gone through the deposition of this witness and it is clear to us that he has come forward only to assist the claimants. His story that he had gone at mid-night to Atul and he had witnessed the accident, does not inspire any confidence. His conduct is far from natural. A man of 60 years of age would not be expected to go to Atul from Valsad at mid-night just for conveying a message to Dalsukhbhai and then not finding Dalsukhbhai, to stand on the wayside on the highway till the early morning. After witnessing the accident, he does not even go near the car but taken a taxi and goes to Valsad from where he catches a train for Bombay. He does not inform anyone about the accident. We are in complete agreement with the reasoning of the Tribunal when it holds that this witness had not seen anything and that he was not present.

6. The contention of the learned Counsel appearing for the appellant was that a car which is proceeding on a highway would not suddenly skid off the road without there being any reason. He submitted that it should be inferred that Vinodchandra was dazzled by the head-lights of the truck coming from the opposite side and it should be inferred that there was negligence on the part of such truck drivers, who came with their head-lights on, which resulted in this accident when the deceased tried to ward off the impact with the coming vehicle. It is not open to resort to such imagination when there is absolutely no basis that any driver of oncoming vehicle put on head-lights so as to cause deviation in the driving by the deceased. It was submitted that in any event it should be treated as an inevitable accident. The nature of the impact shows that the deceased was driving the vehicle rashly and negligently and in a way that he could not have controlled it. The deceased could have easily avoided this type of impact, if he had been in command of the vehicle and had driven it with due care and caution needed even on a highway.

7. The contention that under the policy the passenger risk was covered and therefore, even to the limited extent the Insurance Company should be held liable, is misconceived. The policy Ex.46 shows that for the limited liability upto 5 passengers (which included

the person driving), an additional premium was paid and the extent of liability of the Insurance Company in this regard is reflected from endorsement No.5 attached to and forming part of the policy. This liability was in respect of accidents to unnamed passengers other than the insured and its paid driver or cleaner. The company had undertaken to pay compensation on the scale provided therein for bodily injury to or death of any passenger other than the insured or his paid driver attendant or cleaner or a person in employ of the insurer coming within the scope of the Workmens' Compensation Act, 1923, but not driving the motor car. Thus, a person driving a motor car was specifically excluded and no liability could therefore arise in respect of the death of the deceased under this policy, as rightly held by the Tribunal.

8. Under these circumstances, we find ourselves in complete agreement with the reasoning and findings of the Tribunal and there is absolutely no warrant for any interference with the impugned award. This appeal is therefore, dismissed with no order as to costs.

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